

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt. 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

All Actions

**PLAINTIFFS' STEERING COMMITTEE'S RESPONSE TO SUPPLEMENTAL
BRIEFING ON DISCOVERY ISSUES**

The Plaintiffs' Steering Committee (the "PSC") files this limited response to the Supplemental Briefs filed by the Saint Thomas Entities (Dkt. No. 1249) and the Tennessee Defendants (Dkt. No. 1258). Earlier this year, the PSC filed a proposed a schedule that would allow the first bellwether trials of a Tennessee plaintiff by May 2015 (Dkt. No. 837.) Support for the PSC's position is more fully set forth in its Memorandum of Support (Dkt. No. 838) and the Reply in Support of that Motion (Dkt. No. 987). For the Court's convenience, the PSC will not rehash the arguments made in these papers, as those arguments remain applicable to the current state of this litigation and the most recent proposals made by the Saint Thomas Entities and the Tennessee Defendants.

An updated bellwether trial plan proposed by the PSC is attached hereto as Exhibit 1.¹ This proposal has been updated to reflect the passage of time since its original filing in January 2014, and has been revised to address some of the issues raised by Defendants in their voluminous filings.

The purpose of this Response is simply to highlight the two key points of disagreement

¹ For the Court's convenience a redline and clean version are provided. The redline shows the changes from the original plan submitted by the PSC at Dkt. No. 837-1.

between the parties: 1) the timeline for discovery and setting of trials; 2) whether the Court should develop a “discovery plan” separate from a bellwether trial plan.

The PSC’s schedule would have the first bellwether trial ready for trial by late-summer of 2015, which is consistent with the Court’s comments on having a speedy trial in this case. (*See* April 10, 2014 Status Conference Trans. at 42-43.) The Saint Thomas Entities’ and the Tennessee Defendants do not propose a date for trials and their proposed schedules would not likely result in a trial until well into 2016, or later, more than four years after the deadly outbreak.

Similarly, both the Tennessee Defendants and the Saint Thomas Entities do not propose any bellwether specific proposals, but instead argue that bellwether issues should be addressed in a separate order – continuing the defendants’ continued push to delay indefinitely any trial over these issues. The PSC combines a discovery plan with a timeline for selection of bellwether cases and a plan of ushering those cases to trial in a reasonable timeframe.

The reasons for the PSC’s proposal are simple. We are now two years removed from the beginning of this national tragedy, and plaintiffs across the country continue to suffer the devastating effects of their injuries. The PSC’s proposal would allow the first trial to commence three years after the outbreak first occurred. There is nothing about this timetable that is unusual or prejudicial to the defendants. On the contrary, the delays advocated by the defendants unfairly prejudice the hundreds of plaintiffs continuing to suffer the effects of the outbreak and waiting for justice.

Accordingly, the PSC respectfully requests that the Court enter the attached Bellwether Trial Plan and Pre-Trial Scheduling Order.

Dated: July 14, 2014

Respectfully submitted,

/s/ J. Gerard Stranch, IV

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. Gerard Stranch, IV, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: July 14, 2014

/s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV (TN Bar # 23045)